IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.1004 OF 2004

Vaikunthanath S. Jagannath .. Appellant
(Org. Plaintiff)

vs.

Abdul Karim Peer Mohd
@ Abdul Karim Malwavala .. Respondent.
(Org. Defendant)

Mr. Sunil Jaykar, Advocate for the Appellant.

Mr.Subodh Joshi i/b. Pandit & Pandit, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 22nd March, 2005.

P.C. :

1. Heard learned Counsel appearing for the parties. The Appeal is preferred by the Original Plaintiff taking exception to order dated 12.10.2004 passed by the learned trial Judge by which the Notice of Motion No.757 of 2004 taken out for restoration of the suit was dismissed.

2. As Chamber Summons No.551 of 2004 for bringing on record the legal representatives of the deceased Defendant was dismissed, the Notice

of Motion was dismissed. By a seperate order passed in Appeal from Order No.980 of 2004 I have restored the Chamber Summons. Hence, the Notice of Motion will have to be also restored.

Hence I pass the following order.

i) The impugned judgment and order dated 12.10.2004 is quashed and set aside and the Notice of Motion No.757 of 2004 is restored to the file.

ii) The parties will appear before the learned trial Jugde on 11.4.2005. The learned trial Judge will decide the Notice of Motion as expeditiously as possible and in any event on or before 31.8.2005.

v) The Appeal is partly allowed in above terms with no order as to costs.

vi) Parties and the concerned Court to act on the authenticated copy of this order.

(A.S.Oka, J.)